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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,036	12/04/2003	Paul B. Davis	121936-40306609	4847
43569	7590	09/19/2006	EXAMINER	
MAYER, BROWN, ROWE & MAW LLP 1909 K STREET, N.W. WASHINGTON, DC 20006			LUSTUSKY, SARA	
			ART UNIT	PAPER NUMBER
			3735	

DATE MAILED: 09/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/727,036

Applicant(s)

DAVIS ET AL.

Examiner

Sara Lustusky

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☒ Certified copies of the priority documents have been received in Application No. 09/936687.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
- Paper No(s)/Mail Date 10/15/04.

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 33-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 33 and 34 recite the limitation "the computer readable medium" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 35 recites the limitation "the computer readable medium" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8, 10, 12-21, 23 and 25-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Sony (TCD-D8 1995).

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Sony teaches a device comprising a computer readable medium for storing a desired signal (as described on pages 2, 28-29 and 35), an output for outputting the signal to the auditory system, and a volume-adjusting feature (described on pages 18 and 37); wherein the device is capable of being used to treat an auditory system disorder, including tinnitus and hyperacusis, and wherein the patient may reset the volume at any time; wherein the device includes a compliance monitoring device (as described on page 40), a battery (as described on page 25); wherein the battery life may last for at least one week of treatment depending on the length of use of the device during the treatment (as described on page 25); wherein the computer readable medium has a storage capacity sufficient to provide a choice, range, or diversity of treatment signals (as described on pages 2, 28 and 29); wherein the computer readable medium storage capacity is approximately equivalent to 4 hours (as described on page 35); wherein the device further comprises coding of the treatment signal capable of preventing copying and tampering by a user (as described on page 29); wherein the device comprises a data downloading function, performed by a wired interface, capable of downloading logged information (for example: preferred treatment signals) which relate to the patient's use of the device (as described on page 28).

Claims 27-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Gooch (Patent 5403262).

Gooch teaches a device comprising signal filtering means configured to generate a treatment signal with peaks and troughs (as seen in Figures 9-12), an output for

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outputting the signal (as seen in Figures 3 and 4), and a volume adjusting feature (as described in lines 48-64 of column 4; in lines 24-45 of column 5; and in lines 55-66 of column 7); wherein the signal filtering means filter an input signal as required to treat a user and is therefore capable of treating hyperacusis; wherein the effectiveness of the treatment signal depends on the individual patient during each peak and trough; wherein the device further comprises a compliance monitoring device which allows a specified or predetermined time interval for a given treatment session to be selected with a timer selector (as described in lines 57-63 of column 5).

Claims 27-29, 31-32 and 37-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Adleman (Patent 6041129).

Adleman teaches a device comprising a signal filtering means configured to generate a treatment signal with peaks and troughs by modification of an input signal, an output for outputting the signal, a volume adjusting feature, a battery for supplying power to the device wherein the battery life may be equivalent to at least one week of treatment depending on the treatment regime; wherein the device further comprises a data downloading function capable of downloading logged information wherein the data downloading function is performed by a wired or wireless interface (as described in lines 41-44 of column 6, lines 62-64 of column 14; in lines 36-48 and 62-67 of column 16, and lines 1-60 of column 17).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8, 10, 14-21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Al-Jassim (1988) in view of Sony (TCD-D8 1995)

Al-Jassim teaches a device for providing treatment of an auditory system disorder comprising: a computer readable medium for storing a treatment signal, an output for the treatment signal; wherein the device may be used to treat tinnitus or hyperacusis; wherein the treatment signal may be a highly dynamic masking signal whose spectral content and intensity constantly varies over time (as described in paragraph 4 of column 1 of page 27; and in paragraph 1 of the Discussion on page 27). While Al-Jassim teaches that an auditory disorder may be treated by using a Walkman, the specific type of Walkman is not disclosed.

Sony teaches a device, known as a Walkman, comprising a computer readable medium for storing a desired signal (as described on pages 2, 28-29 and 35), an output for outputting the signal to the auditory system, and a volume-adjusting feature (described on pages 18 and 37); wherein the device is capable of being used to treat an auditory system disorder, including tinnitus and hyperacusis, and wherein the patient may reset the volume at any time; wherein the device includes a compliance monitoring

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device (as described on page 40), a battery (as described on page 25); wherein the battery life may last for at least one week of treatment depending on the length of use of the device during the treatment (as described on page 25); wherein the computer readable medium has a storage capacity sufficient to provide a choice, range, or diversity of treatment signals (as described on pages 2, 28 and 29); wherein the computer readable medium storage capacity is approximately equivalent to 4 hours (as described on page 35); wherein the device further comprises coding of the treatment signal capable of preventing copying and tampering by a user (as described on page 29); wherein the device comprises a data downloading function, performed by a wired interface, capable of downloading logged information (for example: preferred treatment signals) which relate to the patient's use of the device (as described on page 28).

It would have been obvious to one of ordinary skill in the art at the time of the invention to use a Walkman similar to that of Sony to administer a treatment signal in a method similar to that taught by Al-Jassim to treat an auditory disorder because the Walkman is less expensive than commonly used tinnitus maskers, is readily usable which cuts down on the caregiver's time as well as the user's wait time for receiving treatment, the device is easy to handle and allows the user to choose from a variety of treatment signals (as described in column 1 of page 28 of Al-Jassim).

Claims 9, 11 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sony (TCD-D8 1995) in view of Wolf et al. (Patent 4254922).

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Sony teaches the device of claims 1 and 14, comprising a computer readable medium, an output, and a volume-adjusting feature for outputting a treatment signal, as described above, but does not teach a locking mechanism or a patient identification code.

Wolf et al. teaches a device comprising a computer readable medium and an output wherein the device further comprises a locking mechanism and an identification code (as described in claims 1, 24 and 25).

It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a device similar to that of Sony with a locking mechanism similar to that of Wolf et al. to protect the device of Sony from being used if stolen.

Claims 27-29, and 31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zoels et al. (Patent 6047074) in view of Rastatter et al. (Patent 5961443).

Zoels et al. teaches a device comprising a signal filtering means configured to generate a treatment signal with peaks and troughs by modifying an input signal and an output for outputting the signal for treatment of an auditory disorder, including tinnitus; wherein the signal filtering means and output are part of a hearing aid (as described in the abstract and in lines 36-67 of column 2 and lines 1-16 of column 3). Zoels et al. however, does not expressly teach a hearing aid with a volume-adjusting feature.

Rastatter et al. teaches a hearing aid (10) with a volume adjusting feature (15a) for treatment of an auditory disorder (as seen in Figure 1); wherein the hearing aid

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further comprises a battery (as described in lines 58-67 of column 4; lines 63-67 of column 8 and lines 1-4 of column 9) and/or a battery pack which supplies power for extended use which could last for a week, depending on the treatment regime.

It would have been obvious to one of ordinary skill in the art at the time of the invention to use a hearing aid similar to that of Rastatter et al. with a signal filtering means similar to that taught by Zoels et al. to produce an output for treating an auditory disorder because the hearing aid of Rastatter et al. is designed to provide a user with a therapeutic signal and the volume adjust allows for increased comfort of the user.

Claims 27-29, 31-32 and 35-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Topholm (Patent 4947432).

Topholm teaches a device comprising a signal filtering means, an output, a volume adjusting feature, a coding of the treatment signal and a patient identification code which serve as a locking function, and a battery which serves to supply the device with power and wherein the life of the battery may provide at least one week of treatment depending on the treatment regime (as described in lines 37-42 of column 2, lines 30-33 of column 3, lines 9-18 of column 4, lines 10-17 of column 5, and in lines 59-60 of column 6); wherein the signal filtering means filter an input signal as required to treat a user and is therefore capable of treating hyperacusis; wherein the effectiveness of the treatment signal depends on the individual patient.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sony also teaches a Discman (1996) capable of being used in the method described by Al-Jassim. Hall (Patent 6307945 B1) teaches a radio-based hearing aid system. Brillhart et al. (Patent 5303306) teaches a hearing aid with a programmable remote. Bertino et al. (Patent 5481645) teaches a computer that is protected by an identification code as a safety locking mechanism, the computer being usable with a cassette player.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sara Lustusky whose telephone number is (571) 272 8965. The examiner can normally be reached on M-F: 9 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on (571) 272 4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

S.L.


Charles A. Marmor, II
SPE, Art Unit 3735